

# The Corporation Journal

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(Organized under the New York Trust Company Law)  
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## NOTICE.

In view of the increase in the number of important reports, taxes and other matters requiring attention on the part of corporations, we are inaugurating the publication of a brief summary thereof to appear in each issue. We believe this added feature will greatly increase the value of The Corporation Journal to the busy lawyer.

### SOME IMPORTANT MATTERS FOR NOVEMBER.

#### FEDERAL.

From and after November 1, 1917, war taxes on transportation, dispatches, insurance, admission to amusements and on club dues, etc., go into effect. The increase in first class postal rates is in effect on and after November 2.

#### NEW YORK.

Tax of 3 per cent. on net income of mercantile and manufacturing corporations becomes due on November 1. This is also the first day for filing capital stock report required of corporations other than mercantile and manufacturing.

#### UTAH.

On November 15 corporation license tax is due.

## DOMESTIC CORPORATIONS.

### CALIFORNIA.

#### FORMER OWNERSHIP OF STOCK AS DISQUALIFICATION OF JUDGE.

A judge is disqualified from sitting in a case in which a corporation is a party where he formerly owned stock in the corporation and there is a stockholders' liability growing out of such ownership. In re Honolulu Consol. Oil Co., 243 Fed. 348.

**DELAWARE.**

**LIABILITY OF DIRECTOR TO PAY FOR QUALIFYING SHARES.**

Three shares of stock in the Securities Company of North America originally subscribed for by Franklin L. Sheppard, were at Sheppard's direction transferred to William M. Pyle to qualify him as a director of the company, it being expressly agreed between Pyle and Sheppard that the former should have no beneficial interest in the shares. Though Pyle remained on the records of the company as owner of the shares, Sheppard paid calls on the stock and it was understood that Pyle was not the real owner. Nevertheless, upon dissolution of the corporation, Pyle's administrator was liable to pay the receiver any balance due on the stock. "When one takes shares of stock of a corporation in order to qualify him to be a director of the company, he thereby holds himself out as being the owner thereof in his own right, and cannot escape liability as the record owner of the stock for an assessment made thereon for the benefit of creditors of the company, by showing that he never had a beneficial interest in the stock, but held it as the agent for another, to whom he had delivered the certificate for the shares with a transfer thereof endorsed thereon." *Fell v. Securities Co. of North America*, 100 Atl. 788.

**INSUFFICIENT CONSIDERATION FOR ISSUANCE OF STOCK.**

A business idea or theory for carrying on business which had been used by other corporations and which had no commercial value, or indeed any appreciable value, was not property in any sense. A transaction by which corporate stock is alleged to be paid for thereby violates the Constitution and statutes of the state. Stockholders who acquired their stock subsequent to the unlawful issue, being then ignorant of the unlawful issue thereof, have a right to have such stock cancelled. *Scully v. Automobile Finance Co.*, 101 Atl. 908.

**ILLINOIS.**

**FEATURES OF THE ILLINOIS CORPORATION LAWS.**

The procedure for the organization of an Illinois corporation is complicated and lengthy; an Illinois corporation may not do a real estate business and can only hold such real estate as is necessary for its business, although there are provisions for organizing building corporations; it cannot hold stock in other corporations; the Attorney General has recently ruled that Illinois corporations may have only one object; stockholders' meetings must be held within the state; directors' meetings if held without the state must be authorized at a prior meeting held within the state, or subsequently ratified at a meeting held within the state. All of the authorized capital must be subscribed and fifty per cent. paid in cash or property before certificate of complete organization will issue; stock can be exchanged for property only at its fair cash value, such valuation is open to the uncertain arbitration of the court, or jury in the interest of creditors, regardless of good faith; stockholders have no power to make, alter or amend by-laws, this power being given exclusively to the directors; cumulative voting is permitted in the election of directors; there is no statutory provision authorizing the issuance of preferred stock; par value of shares cannot be less than ten dollars nor more than one hundred dollars; directors assenting to cor-

## THE CORPORATION JOURNAL

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porate debts exceeding the amount of capital stock are personally liable for such excess; by inference directors cannot exceed eleven in number; a foreign corporation is required to pay the high rate of tax only on the proportion of capital employed and business transacted in the state, while in organizing a domestic corporation the same rate must be paid on the entire authorized capital.

### **COST OF ORGANIZATION IS AS FOLLOWS:**

#### **Fee to Secretary of State:**

Filing statement of incorporation, on capital of \$2,500 or less, \$30; on capital from \$2,500 to \$5,000, \$50, and \$1 per \$1,000 in excess. (These fees include one Certificate of Complete Organization under the seal of the Secretary of State. Each additional copy is furnished at the rate of 15 cents per 100 words, usually from \$3 to \$5.)

#### **Fee to Recorder of Deeds:**

Recording certificate of complete organization, in Cook County at rate of 6 cents per 100 words plus 25 cents for certificate of Recorder—from \$2 to \$4.

**TAXATION.** There is no franchise tax based on the amount of authorized or issued stock, but corporations are required to pay a capital stock tax based on the value of the stock in excess of the value of the assessed tangible property. The basis of the assessment of the capital stock of a corporation is the market value of such stock, if it has a market value. If it has no market value, then it should be assessed at its actual value. However, stock of domestic corporations, except banks, is not taxable to the holder. Foreign corporations are not subject to the capital stock tax.

**PROCEDURE FOR INCORPORATION.** The incorporators must not be less than three not more than seven. There is no requirement as to their residence or citizenship. They execute a statement, which is filed with the Secretary of State. The Secretary of State thereupon issues to the incorporators a license as commissioners to open books for subscription to the capital stock of the proposed corporation. As soon as may be, after the capital has been fully subscribed, the commissioners convene a meeting of the subscribers, for the purpose of electing directors or managers, and the transaction of such other business as shall come before them. After the first meeting has been held and before any business can be transacted, the commissioners make and file a sworn report in the office of the Secretary of State of the full proceedings of the subscribers' meeting. The Secretary of State thereupon issues a certificate of complete organization. This certificate is recorded in the office of the Recorder of Deeds of the County where the principal office is located. The corporation is then fully organized and may proceed to do business.

**WHAT THE CORPORATION TRUST COMPANY DOES** to assist attorneys in the incorporation and subsequent statutory maintenance of an Illinois corporation is briefly as follows:

## THE CORPORATION JOURNAL

---

At the time of incorporation it ascertains, upon request, if the name can be used, and furnishes the attorney with a complete set of forms for reference, copies of statements of incorporation, reports of commissioners, subscription lists, etc., which have been approved, files and records the necessary papers and assists the attorney in every possible way in the organization.

It will draft and submit the statement of incorporation, report of commissioners, subscription list, by-laws and minutes of subscribers' meeting and upon approval by the attorney will furnish complete facilities for incorporation, attend to the filing of the papers, the holding of the necessary meetings and return the records completed in minute book form.

Attorneys wishing to keep complete control and supervision over the organization of Illinois corporations have found it extremely convenient and expedient to use the Chicago office of The Corporation Trust Company.

Subsequent to incorporation The Corporation Trust Company furnishes a statutory office, furnishes rooms for holding stockholders' and directors' meetings or holds stockholders' meetings by proxy, gives timely notice for filing state reports and tax returns, and keeps counsel informed of changes in statutes affecting the corporate status.

For foreign corporations entering Illinois, The Corporation Trust Company drafts all documents necessary to secure authority to do business in the State and submits them to the attorney. Upon approval, it attends to their filing with the proper state officials. After qualification, it supplies the statutory agent, notifies the attorney of all State reports and taxes to be paid, and forwards blanks for reports and tax assessments. A statement containing the statutory requirements for admission of foreign corporations to do business in Illinois will be sent upon request and without charge.

An estimate of charges can be secured at our nearest office.

### KENTUCKY.

**FEATURES OF THE KENTUCKY CORPORATION LAWS.** Fifty per cent. of the stock of a Kentucky corporation must be subscribed before business can be commenced; the rate of organization tax is relatively high; it may not hold its own stock except when taken to prevent loss on a debt previously contracted, and no such stock can be held for more than one year; the highest amount of indebtedness to be incurred must be stated in the charter; stock may be issued for property only at its market price at the time such property is delivered; annual meetings of stockholders must be held within the state; each director must hold at least three shares of stock; there is no provision for an executive committee; the word "incorporated" must follow the name of the corporation whenever displayed at the principal place or places of business and on all printed or advertising matter; the stock and transfer books are open to inspection by all persons doing business with the corporation; foreign corporations are permitted to enter the state and do business therein upon filing a statement showing the place of business and name of agent for service of process and paying a recording fee of \$1.00.

## THE CORPORATION JOURNAL

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### **COST OF ORGANIZATION IS AS FOLLOWS:**

**Fee to County Clerk:**

Recording articles of incorporation 1 cent for each 10 words. (Usually about \$2.50).

**Fee to State Treasurer:**

Organization tax, one-tenth of 1% on the authorized capital.

**Fee to Secretary of State:**

Recording articles of incorporation about \$5.

Corporate sign, about \$2.

**TAXATION.** An annual franchise tax is imposed, consisting of 50 cents on each \$1,000 of capital represented by property and business in the State, but in no case less than \$10. Stock in a Kentucky corporation which has as much as 25 per cent. of its property located in Kentucky is exempt from taxation.

**PROCEDURE FOR INCORPORATING.** Any number of persons, not less than three, sign and acknowledge articles of incorporation. These articles are recorded in the County Clerk's office of the County in which the corporation's office or place of business is to be located, and a copy thereof is then filed and recorded in the office of the Secretary of State. The organization tax is paid to the State Treasurer. The incorporators must elect the directors and at least fifty per cent. of the capital stock must in good faith be subscribed before the corporation is authorized to do business. There must also be filed with the Secretary of State a statement, signed by the president and secretary, giving the location of the corporation's office or offices and the name or names of its agent or agents thereat upon whom process may be served.

**WHAT THE CORPORATION TRUST COMPANY DOES** to assist attorneys in the incorporation and subsequent statutory maintenance of a Kentucky corporation is briefly as follows:

At the time of incorporation it ascertains, upon request, if the name can be used, and furnishes the attorney with a complete set of forms for reference copies of articles of incorporation which have been approved, files the articles of incorporation and statement of location of offices and of process agents and assists the attorney in every way possible in the organization.

It will draft and submit the articles of incorporation, by-laws and records of proceedings, and upon approval by the attorney will furnish complete facilities for incorporation, attend to the filing of the papers, the holding of the necessary meetings and return the records completed in minute book form.

Attorneys wishing to keep complete control and supervision over the organization of Kentucky corporations have found it extremely convenient and expedient to use the local office of The Corporation Trust Company and the service of its representatives in Kentucky.

Subsequent to incorporation The Corporation Trust Company furnishes a statutory office, acts as custodian of stock record books, furnishes rooms for holding

## THE CORPORATION JOURNAL

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stockholders' meetings or holds same by proxy, gives timely notice for filing state reports and tax returns, and keeps counsel informed of changes in statutes affecting the corporate status.

For foreign corporations entering Kentucky, The Corporation Trust Company drafts for approval and submits to attorneys all documents necessary to secure authority to do business in the State. It files the necessary papers and supplies the agent for service of process. After qualification it continues to supply the agent for service of process, notifies the attorney of all State reports and taxes to be paid, and forwards blanks for reports and tax assessments. A statement containing the statutory requirements for admission of foreign corporations to do business in Kentucky will be sent upon request and without charge.

An estimate of charges can be secured at our nearest office.

**EXECUTIVE COMMITTEE.** "While there might have been, in the early history of corporations, some doubt as to the right of the board of directors to delegate any part of its powers to an executive committee, it is now settled beyond controversy that the board of directors may exercise that power." *Holdeman v. Holdeman*, 197 S. W. 376.

**DIRECTORS MUST ACT TOGETHER AS A BOARD.** The separate assent of a majority is not binding on the corporation. Neither can they vote by proxy. *Holdeman v. Holdeman* 197 S. W. 376.

**CONTRACT TO VOTE STOCK FOR CONTINUED MANAGEMENT OF A CORPORATION IS AGAINST PUBLIC POLICY.** A contract between stockholders in two newspaper corporations provided that during their lives certain persons as president and as vice-president or director were to have the management of the companies, and that certain stock should always be voted to retain them in such management. This contract is not enforceable against other directors who had adopted a reorganization resolution excluding one of the parties from editorial management because of differences between himself and the other directors and because of an alleged temperamental unfitness for the position. In discussing the invalidity of the contract, the Court says: "Although a stockholder may vote as he pleases, public policy forbids the enforcement of a contract by which a stockholder undertakes to bargain away his right to vote for directors according to his best judgment, and in the interest of the corporation. He has no right to disable himself by contract from pursuing his duty. These defendants not only owe this duty to the corporations they represent as directors, but they also owe it to Mr. Waterson, the other stockholder, who was not a party to the contract. He has a right to demand of the stockholders a faithful performance of their obligations under the law. And he has the further right to demand that each director discharge his duty as such, not in accordance with his personal interest or any personal contract, but in the best interest of the corporation they represent. Otherwise, he is not a director in fact, but is a mere automaton. If a "dummy" director should vote contrary to the wishes of the stockholder who made him a director under a contract that he should by his vote carry out the wishes of the stockholder, there is no law that would invalidate such a vote." *Holdeman v. Holdeman*, 197 S. W. 376.



## THE CORPORATION JOURNAL

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### MANITOBA.

**ULTRA VIRES.** The authority of directors to execute an assignment of an agreement for the sale of land by the company, and the usual indemnity covenant in connection therewith, may be derived from a by-law passed subsequent to the execution of the assignment. A trading company may, without express authority, enter into whatever agreements or covenants are usual in the particular business it is authorized to carry on in connection with any matter in which it is directly interested and which tends to promote its corporate objects. *National Land & Loan Co. v. Rat Portage Lumber Co.*, 36 D. L. R. 97. An extended annotation by C. B. Lebatt on *Ultra Vires*, reviewing English, Scotch, Canadian and American decisions, accompanies the foregoing decision.

### OHIO.

**RIGHTS OF DISSATISFIED STOCKHOLDERS ON SALE OF ENTIRE CORPORATE ASSETS.** A corporation sold its property as an entirety. Certain stockholders, proceeding under section 8713 of the General Code, notified the company of their dissatisfaction with the terms of the sale and demanded in writing from the company payment for their stock. No payment was made, and arbitrators were selected, pursuant to section 8713, to determine the valuation of the stock. An award was made by the arbitrators, but this award is set aside by the State Supreme Court. There can be no recovery by holders of bonus stock against fellow stockholders whose ownership of such stock is proportionately greater. The issuance of bonus stock was illegal and as between wrong doers the law "leaves the parties where it finds them." *Hoffard v. Williams Shoe Co.*, 117 N. E. 17.

**POWERS, RIGHTS AND DUTIES OF A CONSOLIDATED COMPANY** within the state of Ohio must be determined by the laws of this state. *Pollitz v. Public Utilities Commission*, 117 N. E. 149.

**GUARANTY OF BONDS OF ANOTHER CORPORATION.** A corporation which has legally acquired bonds of another corporation, upon selling them, may guaranty their payment as an incident to their advantageous disposal. *Pollitz v. Public Utilities Commission*, 117 N. E. 149.

**RIGHTS OF HOLDERS OF BONDS ISSUED AS A BONUS.** The stock of a corporation was fully paid for in cash. To each stockholder there was also given as a bonus corporate bonds proportionate to his holding of stock. In a suit to determine the rights of such stockholders as bondholders, it is held that they have no standing as creditors in any true sense of the word. As against them, "the corporation could plead no consideration; in competition with its actual creditors, present or future, they have no rights; and the corporation for its protection, to enable it to pay its debts and to transact its business, is entitled to the aid of a court of equity so that it may not be deprived of its defense through the negotiation of these evidences of an obligation unenforceable by the original parties, though valid when acquired by a holder in due course. But while the original bondholders are

## THE CORPORATION JOURNAL

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not creditors in the full sense, nevertheless as the transaction in question was entered into with the consent of all the stockholders, for the legitimate purpose of giving minority holders some protection against the possible wrongdoing and mismanagement of the majority the contract of the parties should be given the utmost effect that may be permissible under the law. While they cannot compete with creditors, and therefore while the company is a going concern cannot subject the creditors' fund, the capital of the company, to their claims, yet subject to this limitation, their contractual rights can and should be enforced. In practical effect, they are in a position analogous to that of first preferred stockholders (see *In re Fehheimer Fishel Co.*, 212 Fed. 358, 129 C. C. A. 33), entitled to cumulative dividends payable out of surplus, and to a redemption of the principal out of surplus on and after July 1, 1936, but in both cases without impairment of fixed capital. . . . And in the event that the company should be liquidated before the payment in full of the bonds and the interest thereon, then on such liquidation, after all of the creditors shall have been satisfied, the remaining capital should first be devoted to the bond redemption. In substance, all of the company's funds which could be legally devoted to the payment of dividends, and, on liquidation, to distribution among stockholders, are to be first applied to these bondholders' claims. To this extent the agreement entered into by all the stockholders on behalf of the company can be legally carried out." *Williamson v. Collins*, 243 Fed. 835.

### OREGON.

**THE INFORMALITY OF A MEETING HELD OUTSIDE THE STATE** may be waived by the shareholders, and the act ratified by their subsequent consent and acquiescence. In *Wilson's Estate*, 167 Pac. 580.

### PENNSYLVANIA.

**LIABILITY OF TRUSTEE FOR A BOND ISSUE.** Mortgage bonds of the Reynoldsville Water Company were executed in its behalf by its president and its secretary. The bonds provided that after thus executed they should be certified by the Farmers' & Miners' Trust Company and then delivered to the treasurer of the water company. Certain bonds were sent to the trust company with the treasurer's receipt and with directions to send the bonds to a certain bank for delivery by that bank to the president of the water company. The trust company did as directed and when the president of the water company procured the bonds, he embezzled them. The water company sued the trust company for negligence in administration of its trust, but the State Supreme Court holds that the trust company is not liable, under the circumstances. The trust company was fully warranted upon delivery of the treasurer's receipt to dispose of the bonds as directed by the company's president. *Reynoldsville Water Co. v. Farmers' & Miners' Trust Co.*, 101 Atl. 800.

### UTAH.

**A PROMOTER HAD NO VALID CLAIM BECAUSE OF NON-DELIVERY** of stock in a corporation which was not organized. Failure to organize the corpor-



## THE CORPORATION JOURNAL

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ation was due to no fault of the defendants. The promise to issue such stock is not absolute but is conditional upon organization of the corporation. *Gray v. Bullen*, 167 Pac. 683.

### ISSUE, TRANSFER AND REGISTRATION OF STOCK.

#### ALABAMA.

**UNAUTHORIZED ISSUANCE OF STOCK.** The Averyt Drug Company was organized with an authorized capital stock of \$2,000, \$1,000 of which was paid in cash. On the same day of its incorporation, at a special meeting of the board of directors, which on the following day was ratified at a special meeting of the stockholders, the common stock was increased to a total of \$50,000 par value and the preferred stock was increased to a total of \$100,000. Eighty-nine shares of the preferred stock were issued as paid for in promotion of the company. With every two shares of preferred there was issued one share of common stock without further consideration. S. S. Heide bought five shares of preferred stock from the company paying therefor \$500 in installments. Subsequently he tendered the stock back to the company and brought suit for recovery of the purchase price. The State Supreme Court holds that he is entitled to a recovery. The issuance of the \$100,000 of preferred stock was wholly unauthorized. Section 3479, Code 1907, provides that "preferred stock in no case exceeding two-thirds of the capital stock paid for in cash or property may be issued." The stock issued in the instant case was void and conferred no rights and subjected the holder to no liabilities. *Heide v. Capital Securities Co.*, 76 So. 313.

#### OREGON.

**EFFECT OF TRANSFER ON RIGHT TO DIVIDENDS.** "A dividend is usually considered a parcel of the mass of corporate property until declared, and therefore incident to and parcel of the stock up to the time it is declared. Before its declaration, it will pass with the sale or devise of the stock. Whoever owns the stock prior to the declaration of the dividend owns the dividend also. The moment the dividend is declared, then it becomes separate and distinct from the stock, and the dividend falls to him who is proprietor of the stock of which it was before incident. A transfer of the stock passes all dividends declared subsequent to the transfer." *In re Wilson's Estate*, 167 Pac. 580.

One of the many advantages of employing a transfer agent is the convenience of being furnished with an up-to-date and accurate list of stockholders and their addresses to whom dividend checks are to be sent, as well as notices of meetings, reports, etc.

### FOREIGN CORPORATIONS.

#### ILLINOIS.

**PENALTY FOR FAILURE TO FILE REPORT.** Hurd's Rev. St. 1915-16, Chap. 32, Sec. 67f, provides that at any time the Secretary of State may, in his discretion prepare and propound to the President, Secretary, any Director or Mana-

## THE CORPORATION JOURNAL

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ger of any corporation doing business in the state, interrogatories respecting the character of business being transacted by it, the location of its business, the names and residences of its directors and officers, the amount of capital paid, as well as what disposition has been made of capital stock subscribed for or authorized and not paid in. Answers must be filed within five days after receipt of the interrogatories. On failure to file within ten days the Secretary of State may revoke the authority of the corporation to do business in the state. Section 67g provides a fine of not less than \$1,000 nor more than \$10,000 to be recovered against the defaulting corporation and that "no suit may be maintained either at law or in equity upon any claim, legal or equitable, whether arising out of contract or tort, in any court in this State." The latter provision, however, does not prevent a corporation from recovering in a Federal Court on a contract which was in force prior to default. Default "on the part of a corporation would not have retroactive effect." *Karvin & Co. v. American Colortype Co.*, 243 Fed. 317.

### OHIO.

**"DOING BUSINESS" UNDER QUALIFICATION STATUTES DISTINGUISHED FROM "DOING BUSINESS" UNDER STATUTES PERMITTING SERVICE OF PROCESS.** "It does not follow that statutes fixing the conditions under which a foreign corporation may engage in business in a state are to have the same construction in statutes permitting a foreign corporation to be served in a state where it may be found. In the former it is, of course, a more or less continuing course of business which is meant to be regulated, whereas in the latter the object sought is only to give notice to a corporation of a pending action. The tendency is to hold that whatever is reasonably effective for this purpose is a good service."

An installation or single sale of goods is not "doing business," but the installation of three turbine engines is "doing business" within the meaning of laws authorizing foreign corporations coming into a state and doing business there to be sued. The person in charge of such work is a "managing agent" for the purpose of being served with process against the company. *Beach v. Kerr Turbine Co.*, 243 Fed. 706.

### OKLAHOMA.

**DOING BUSINESS.** A foreign corporation engaged in the manufacture and sale of certain proprietary medicines, by written agreement with a resident of Oklahoma, sold its products delivered f.o.b. at a point outside of the state to be shipped into Oklahoma and there sold by him at retail. This did not constitute "doing business" so as to require qualification of the corporation as a condition precedent to the right to sue on the contract. *J. R. Watkins Medical Company of Winona, Minn., v. Coombes*, 166 Pac. 1072.

## CONGRESS.

**LIST OF STOCKHOLDERS UNDER THE TRADING WITH THE ENEMY ACT.** Section 7 (a) of the Trading with the Enemy Act, approved by the President on Oct. 6, 1917, contains the following provision:

## THE CORPORATION JOURNAL

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"That every corporation incorporated within the United States, and every unincorporated association, or company, or trustee, or trustees within the United States, issuing shares or certificates representing beneficial interests, shall, under such rules and regulations as the President may prescribe and, within sixty days after the passage of this Act, and at such other times thereafter as the President may require, transmit to the alien property custodian a full list, duly sworn to, of every officer, director, or stockholder known to be, or whom the representative of such corporation, association, company, or trustee has reasonable cause to believe to be an enemy or ally of enemy resident within the territory, or a subject or citizen residing outside of the United States, of any nation with which the United States is at war, or resident within the territory, or a subject or citizen residing outside of the United States, of any ally of any nation with which the United States is at war, together with the amount of stock or shares owned by each such officer, director, or stockholder, or in which he has any interest.

"The President may also require a similar list to be transmitted of all stock or shares owned on February third, nineteen hundred and seventeen, by any person now defined as an enemy or ally of enemy, or in which any such person had any interest; and he may also require a list to be transmitted of all cases in which said corporation, association, company, or trustee has reasonable cause to believe that the stock or shares on February third, nineteen hundred and seventeen, were owned or are owned by such enemy or ally of enemy, though standing on the books in the name of another: PROVIDED, HOWEVER, That the name of any such officer, director, or stockholder shall be stricken permanently or temporarily from such list by the alien property custodian when he shall be satisfied that he is not such enemy or ally of enemy."

## UNITED STATES SUPREME COURT.

**ALL MEMBERS OF THE BAR WHO EXPECT TO FILE PETITIONS FOR WRITS OF CERTIORARI** in the United States Supreme Court will find a memoranda opinion handed down by Chief Justice White on Monday, October 22, 1917, to be of great interest. This is the first decision construing the Act of September 6, 1916, relating to writs of certiorari. The Chief Justice holds that the finality contemplated with respect to the decision sought to be reviewed must be determined by the face of the record and the formal character of the judgment rendered—a principle which excludes all conception of finality for the purpose of review in a judgment by a State Supreme Court ordering a new trial in the Court below, although the State Supreme Court had determined the ultimate right of recovery in the case and the general principles by which that right was to be measured. *W. L. Bruce, Adm'r, v. William Tobin* (No. 645, October Term, 1917, U. S. Supreme Court).

Many decisions are expected during the present term. They will be reported as soon as possible to subscribers to our Supreme Court Service. Subscribers also receive telegraphic advice of action in particular cases. Our duplicate copy of the Supreme Court Docket is open to their inspection. Particulars regarding this service may be obtained from our nearest office.

## LEGISLATIVE SESSIONS 1917-1918.

State Legislative sessions for 1918 and the second session of the 65th Congress will be particularly important, because of various war measures that will be proposed and enacted. The power of Congress, though wide, is not all-inclusive. Many things must be left to the states. War legislation in England and other countries is confined in its sources, as compared to the United States. Keen managers and advisors find it necessary to follow legislation in the several states, as well as in Congress, in order to properly protect their properties against the enactment of ill-advised laws, to provide in advance for compliance with laws requiring changes in methods and equipment and to conform without penalty with laws that go into effect upon passage or soon thereafter.

The second session of the 65th Congress convenes December 3, 1917. Regular State legislative sessions will convene in 1918, as follows: Georgia, June 26; Kentucky, January 8; Louisiana, May 13; Maryland, January 2; Massachusetts, January 2; Mississippi, January 8; New Jersey, January 8; New York, January 2; Rhode Island, January 1, 1918; South Carolina, January 8; and Virginia, January 9.

The Legislative Department of The Corporation Trust Company furnishes prompt and accurate reports on all subjects of legislation, introduced or enacted in Congress and in all State Legislatures, and of the daily action thereon. It furnishes copies of bills as introduced, amended and enacted into law. It also reports on direct legislation, including advice of the invocation of the Referendum and the filing of Initiative petitions. It advises of constitutional amendments and the results of elections thereon. In New York City, Chicago, Philadelphia, Boston, Pittsburgh and St. Louis, our representatives call daily and take care of the records of legislation installed in card cabinets and loose-leaf files furnished by us. Clients located outside of these cities are furnished with a similar service by mail. No detail devolves upon the client—everything is kept on his desk ready for immediate reference and in a form that shows at a glance the situation with respect to introduced, pending or enacted legislation. Those who do not thus avail themselves of the "last word" are at a disadvantage in competing with the large industrial, public utility, railroad, insurance and financial institutions which employ this service.

## TAXATION.

### NEW YORK.

**WHAT IS THE MEANING OF THE TERM "CAPITAL STOCK?"** The term "capital stock," as used in the final sentence of section 183 of the Tax Law does not mean share stock, or issued capital stock, but the property of the corporation. Capital stock and capital are practically the equivalent of each other when considered as a basis for a franchise tax. The Standard Oil Company of New York is not entitled to exemption from the franchise tax imposed by section 182 of the Tax Law, as its gross assets in this State do not amount to 40 per cent. of its "capital stock," although it has more than 40 per cent. of its capital as represented by its total issued shares of stock so invested. *Peo. ex rel. Standard Oil Co. v. Saxe* (App. Div. Third Department, N. Y. Law Journal, Oct. 1, 1917.)

## THE CORPORATION JOURNAL

### INCOME TAX.

For preceding references, see 3 Corporation Journal, page 68.

The War Income Tax Law, approved October 3, 1917, is reproduced verbatim, our Income Tax Service scheme of arbitrary paragraphs being followed. (Pp. 407-428).

A treasury decision relates to verification of returns of income by individuals in the Naval and Military establishment of the United States at home or abroad in certain cases. (P. 431.)

An Acting Secretary of the Treasury answers a telegraphic inquiry regarding application of exemption when several members of a family invest in new Liberty bonds. (P. 431.)

The Commissioner states that upon application showing reasonable cause for delay a corporation making income and excess profits tax returns on basis of fiscal year ending August thirty-first or September thirtieth will be granted an extension of time. (P. 432.)

The manner of determining when a bad debt may be considered worthless and be treated as a loss is the subject of a letter by Commissioner Daniel C. Roper. (P. 432.)

According to a treasury decision all dividends paid out of amounts set aside to cover depreciation and depletion constitute taxable income to the stockholder receiving them. (P. 433.)

The Commissioner of Internal Revenue has issued rulings regarding application of Income and Excess Profits Taxes to Liberty bonds issued or to be issued under the Act of September 24, 1917. (P. 434.)

(NOTE.—The page references are to our Income Tax Service, 1917, in which these rulings are printed in full. Some of these rulings are formal treasury decisions; others are contained in letters answering specific questions.)

### FEDERAL ESTATE TAX.

#### RULINGS AND REGULATIONS.

For preceding references see 3 Corporation Journal, page 69.

A decision of the New York Supreme Court, Appellate Division, holds that the Federal Estate Tax is not a proper deduction in determining the amount subject to the New York State Transfer Tax. (P. 73.)

According to a treasury decision, State Inheritance Taxes are not deductible under Title II, Act of September 8, 1916. (P. 75.)

A letter to Collectors of Internal Revenue relates to a requirement that executors, etc., of estates liable to tax make no disposition of personal effects until their value has been verified by a Government Agent. (P. 76.)

The War Revenue Act of Oct. 3, 1917, makes important additions to the Estate Taxes. (P. 77.)

A treasury decision holds that bonds of domestic corporations owned by a non-resident decedent, such bonds being physically situated outside of the United States, are not returnable as a portion of his gross estate. (P. 79.)

## THE CORPORATION JOURNAL

Interpretation of a provision of sec. 203 (a) (1) of the Act of September 8, 1916, relating to the deductibility of amounts expended for support of dependents, is contained in a treasury decision. (P. 80.)

The requirements necessary to a valid executed gift are discussed by the Commissioner. (P. 82.)

A treasury decision relates to increase in rates of taxation upon estates of decedents dying on and after October 4, 1917. (P. 83.)

A letter by the Commissioner of Internal Revenue relates to the lien provisions provided by the Estate Tax Law. (P. 84.)

(NOTE.—The page references are to our War Tax Service, wherein the foregoing rulings and regulations are reported in full.)

### MUNITION MANUFACTURER'S TAX.

#### RULINGS AND REGULATIONS.

For preceding references see 3 Corporation Journal, p. 46.

The War Revenue Act of October 3, 1917, reduces the Munition Manufacturer's tax so that the rate for 1917 shall be ten per cent. instead of twelve and one-half per cent. It also provides that subdivision 2 of section 214 shall cease to be of effect after January 1, 1918. (P. 231.)

(NOTE.—The page reference is to our War Tax Service, where the foregoing is reported in full.)

### CAPITAL STOCK TAX.

#### RULINGS AND REGULATIONS.

For preceding references see 3 Corporation Journal, p. 70.

The manner of determining the fair value of the total capital stock of real estate and investment companies is discussed in a letter from a Deputy Commissioner. (P. 663.)

(NOTE.—The page reference is to our War Tax Service, where this ruling is printed in full.)

### EXCESS PROFITS TAX.

For preceding reference see 2 Corporation Journal, page 334.

Excess Profits Tax Return, Form 1095, for use by corporations making returns for income taxes on a fiscal year basis has been published. (P. 907.)

The Act of Oct. 3, 1917, repeals the Excess Profits Tax Law of March 3, 1917, and provides for credit of any tax paid thereunder. (P. 910.)

The War Excess Profits Tax Law, approved Oct. 3, 1917, is set forth in full. (Pp. 911-922.)

\*Interest on United States bonds, treasury certificates of indebtedness and war saving certificates issued under authority of Act of September 24, 1917, is subject



## THE CORPORATION JOURNAL

to War Excess Profits Tax, except to extent of interest on aggregate investment therein of \$5,000. (P. 925.)

United States Treasury certificates of indebtedness issued subsequent to September 1, 1917, are tax free only if and to the extent provided in connection with the issue thereof. (P. 925.)

Letters from Department officials relate to returns under the Excess Profits Tax Act of March 3, 1917, by corporations and partnerships which have established their own fiscal year. (P. 926.)

(NOTE.—The page references are to our War Tax Service wherein the foregoing is printed in full.)

### SPECIAL WAR TAX LEVIES.

Provisions of the Act of Oct. 3, 1917, relate to war taxes on facilities furnished by Public Utilities (p. 1101), on Insurance, (p. 1103), the war excise taxes (pp. 1201-1204), war taxation on admissions and dues (p. 1301-1303), and war stamp taxes (p. 1401-1408).

Regulations have been issued by the Treasury Department concerning collection of the tax on playing cards. (P. 1411).

(NOTE.—The page references are to our War Tax Service, where the laws and regulations above referred to are printed in full.)

### FEDERAL RESERVE.

#### RULINGS AND REGULATIONS.

For preceding references to rulings see 3 Corporation Journal, page 70.

An opinion by the Attorney-General pertains to the interlocking directorate provisions of the Clayton Act as applied to State member banks. (Pp. 546-548.)

Informal rulings have been issued by the Board on checks payable in exchange, on direct loans on cattle, on interlocking directorates, on note indorsements by directors of member banks, (p. 549) and on minimum capitalization requirements of State Banks. (P. 550.)

The law department has rendered opinions on renewal of 15-day notes of member banks (p. 550) and on acceptance of drafts with documents attached. (P. 551).

Georgia has passed an act authorizing national banks to act as Trustee, Executor, Administrator and Registrar of stocks and bonds in that state. (P. 553.)

The Governor of the Board has issued a letter relating to election of directors. (P. 553.)

(NOTE.—The page references are to our Federal Reserve Act Service which reports all rulings and regulations of the Federal Reserve Board.)

### TRADE COMMISSION.

No rulings have been issued since our last report. See 3 Corporation Journal page 71.

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